ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

CITY OF PEORIA AND CITY OF PHOENIX v.
BRINK'S HOME SECURITY
CV-10-0218-PR

PARTIES:

Petitioner: Brink's Home Security ("Brink's")

Respondents: The Cities of Phoenix and Peoria ("Cities")

Amicus Curiae: Arizona-New Mexico Cable Communications Association and the Broadband Tax Institute.

FACTS:

Brink's provides and installs home alarm and monitoring systems. If an alarm is activated and the homeowner does not cancel the alarm, a siren sounds and information is automatically transmitted from the residence to Brink's central monitoring station in Texas by way of various telecommunications systems. Someone in the Texas center then calls the customer in Phoenix or Peoria. The monitoring process ends in Peoria or Phoenix, either at the customer's request or by a call to the local police department.

The Cities assessed transaction privilege taxes against Brink's based on its customers' payment of monitoring fees. Brink's protested the assessments. The tax court found the Cities were not precluded from taxing Brink's income from its monitoring services.

On appeal to the court of appeals, Brink's claimed exemption from the transaction privilege tax under a law that prohibits cities from levying such a tax on "[i]nterstate telecommunications services, which include that portion of telecommunications services, such as subscriber line service, allocable by federal law to interstate telecommunications service." A.R.S. §42-6004(A) (2) (Supp. 2009).

The majority of the appellate court panel noted that the Arizona Legislature has not defined interstate telecommunications services, so it looked to the statutory definition of "intrastate telecommunication services." If the service qualifies as "*intra*state," it could not be "*inter*state." The statutory definition of "intrastate telecommunications services" includes transmitting information by wire or numerous other means if the transmitted information begins and ends in Arizona. A.R.S. § 42-5064(E)(4). Thus, if the transmission does not begin and end in Arizona, it is interstate.

The majority rejected Brink's argument that its transmissions were interstate in nature, and thus not taxable by the Cities, based on the characterization of its services as three separate interstate calls: (1) Arizona to Texas to alert Brinks, (2) Texas to Arizona to alert the customer, and (3) Texas

to Arizona to alert authorities. The majority found that analysis to be no different than the overly narrow distinctions the Arizona Supreme Court rejected in the case of *People's Choice TV Corp., Inc., v. City of Tucson,* 202 Ariz. 401, 402 ¶ 2, 46 P.3d 412, 413 (2002), in which the taxpayer received local and out-of-state television programs at its facility outside Tucson and used microwave frequencies to transmit the programs to its customers in Tucson. The Court read the definition of "interstate telecommunications services" in A.R.S. § 42-6004(A)(2) expansively to find that not only "transmissions" were included in the phrase "interstate telecommunications services," but also the related services the taxpayer provided.

The majority in this case held that viewing Brink's service as three different interstate calls did not comport with the broad meaning" of "telecommunications services" in *People's Choice*. The majority characterized Brink's service, viewed in its entirety, as a telecommunication service loop that begins in Arizona and ends in Arizona. Thus, the majority concluded, Brink's transmissions are "intrastate telecommunications services" under § 42-5064(E)(4), and so are taxable under Arizona law.

The majority also found the tax does not violate the United States Constitution's Commerce Clause because it meets the tests set forth by the United States Supreme Court in *Goldberg v. Sweet*, 488 U.S. 252 (1989): (1) the taxpayer has a substantial nexus with the city; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce, and (4) the tax is fairly related to the taxpayer's activities and presence in the city. The majority therefore affirmed judgment in favor of the Cities.

Judge Johnsen dissented, reasoning that § 42-6004(A)(2) bars the Cities from imposing transaction privilege taxes on income Brink's receives for performing its monitoring services because the calls by which Brink's performs its monitoring services are interstate in nature. Just as A.R.S. § 42-6004(A)(2) would not permit a city to impose a transaction privilege tax on fees a telephone provider receives for calls placed between Arizona and Texas and vice versa, Judge Johnsen concluded the statute does not permit a city to tax the monitoring services Brink's provides by way of those telephone calls. The majority's "single loop" theory does not take into account that the three telephone calls do not transmit the same information. While the initial automated call contains an alert that an alarm has been triggered, the two calls that follow are separate conversations that include additional information about what action should be taken as a result of the alarm. Thus, the Cities' imposition of transaction privilege taxes on Brink's income received from customers in Peoria and Phoenix violates Arizona law.

ISSUES:

1. Did the majority err in ruling that electronic transmissions from Arizona to Texas and subsequent, separate voice transmissions from Texas to Arizona must be aggregated into a fictional "loop" that is deemed to originate and terminate in Arizona, thus evading Arizona's statutory prohibition on cities levying a transaction privilege tax on "*inter*state telecommunications services?"

2. Did the majority further err in holding that the Cities' unapportioned

transaction privilege tax on Brink's revenues from providing alarm monitoring services, which revenues are largely dependent upon the activities of Brink's monitoring personnel in Texas, did not violate the basic Commerce Clause precept that states may tax "only that portion of the revenues from the interstate activity which reasonably reflects the in-state component of the activity being taxed," *Goldberg v. Sweet*, 488 U.S. 252, 262 (1989)?